

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ESTATE OF STELLA MINARDI
IRVINE, DECEASED

Claim No. CU-3662

Decision No. CU-6164

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered on April 14, 1971; no oral hearing requested.

Hearing on the record held on June 23, 1972.

FINAL DECISION

Under date of April 14, 1971, the Commission issued its Proposed Decision denying this claim in its entirety for lack of proof. Subsequently, further supporting evidence was submitted including proof that the decedent was allowed a tax deduction for her Cuban losses by the Internal Revenue Service. Inasmuch as it appears that claimant died on March 8, 1970 and since proof of the appointment of a legal representative of her estate has not been filed, the ESTATE OF STELLA MINARDI IRVINE, DECEASED has been substituted as claimant. (FCSC Reg., 45 C.F.R. §531.5(j)(1970).)

Upon consideration of the entire record, the Commission amends its decision in this matter as follows:

The Commission finds that the deceased and her husband, a British national, each owned 1/2 interests in the properties in question pursuant to the community property laws of Cuba. (See Claim of Robert L. Cheaney, et ux., Claim No. CU-0915.) No claim has been filed by or on behalf of her husband inasmuch as he is ineligible under the express provisions of Title V of the Act.

The Commission finds that the deceased owned a 1/2 interest in 154 head of cattle that were being pastured on a ranch near Guantanamo, Cuba. On the basis of a Resolution of the Cuban National Land Reform Institute which effected the taking of the rancher's property, the Commission finds that the 154 head of cattle were taken by the Government of Cuba on October 30, 1959.

The record shows that the cattle were acquired on April 21, 1959 for \$14,630.00. It further appears that Cuba sold most of the cattle between February 20, 1960 and July 1, 1960. Based upon said sales by Cuba, the Commission finds that the 154 head of cattle had a value of \$18,278.85 on October 30, 1959.

The Commission finds that the deceased owned a 1/2 interest in a sugar cane plantation known as Purial in Guantanamo, Cuba. The plantation had an area of 17.635 caballeria (1 caballeria equals 33.162 acres). In addition, 10.295 caballerias were leased from the nearby Central Costa Rica sugar mill. All of the foregoing land was developed by the deceased and her husband and was producing sugar cane at the time of loss. The crops were sold to the sugar mill pursuant to the lease agreement.

The evidence establishes and the Commission finds that claimant's plantation and that of the Central Costa Rica sugar mill were taken by the Government of Cuba on June 23, 1961. On the basis of an appraisal by a firm of Engineers, Architects, Adjusters and Appraisers, the Commission finds that the value of the plantation on the date of loss was \$109,921.00.

The Commission further finds that certain amounts of the sugar cane belonging to the deceased and her husband had been sold to the Central Costa Rica sugar mill. The buyer attempted to forward a check to the deceased and her husband, but were prevented from doing so by the Cuban authorities who took the sugar mill. Based on the evidence of record, the Commission finds that the value of said sugar cane on June 23, 1961 when it was taken by Cuba, was \$14,358.41.

The Commission finds that the deceased and her husband acquired in 1956 certain residential land at #16424 Avenue 17-B, Country Club Park, Havana, Cuba. In 1957 they caused a residence to be constructed on the land. Thereafter the property was occupied by the Canadian Embassy. The record includes a copy of a letter of November 9, 1966 from the Canadian Embassy to the deceased's husband in which it is reported that the property was taken by the Government of Cuba in August 1966. In the absence of evidence to the contrary, the Commission finds that the taking occurred on August 15, 1966.

Based on the evidence of record, including costs of acquiring and improving the property, the Commission finds that the value of the improved real property on August 15, 1966 was \$58,000.00.

The Commission finds that the deceased owned a 1/2 interest in the furniture and other items of personal property maintained in the residence at Country Club Park, Havana, Cuba. The Commission further finds that the personal property was taken by the Government of Cuba on August 15, 1966 when the real property was taken.

Based on a copy of a detailed inventory prepared by an official of the Canadian Embassy, the Commission finds that the aggregate value of the personal property on the date of loss was \$9,000.00.

On the basis of a copy of a certificate issued by the Cuban Ministry of Transport, the Commission finds that the deceased owned a 1/2 interest in a 1958 Oldsmobile "88". The Commission further finds that the automobile was taken by the Government of Cuba on August 15, 1966.

According to claimant's statements, the automobile was acquired new at a cost of \$5,400.00, including an air-conditioning system. It is asserted that the value of the automobile on the date of loss was \$3,500.00. The Commission notes that the automobile was subject to depreciation at the rate of 15% per annum. On the basis of the entire record, the Commission finds that the value of the automobile on August 15, 1966 was \$500.00..

The Commission finds that the deceased owned a 1/2 interest in certain land at Delicias, Cabanas, Cuban, having an area of 3,132 square meters. The Commission further finds that the land was taken by the Government of Cuba on August 15, 1966. Based on the evidence of record, including the purchase price of the property, the Commission finds that the value of the land on August 15, 1966 was \$4,000.00.

The losses herein are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Cattle	October 30, 1959	\$ 18,278.85
Purial plantation	June 23, 1961	109,921.00
Sugar Cane	June 23, 1961	14,358.41
Improved real property	August 15, 1966	58,000.00
Furniture and other personal property at residence	August 15, 1966	9,000.00
Automobile	August 15, 1966	500.00
Unimproved land	August 15, 1966	<u>4,000.00</u>
Total		<u>\$214,058.26</u>

Therefore, the deceased sustained a loss aggregating \$107,029.13 to which the Estate succeeded.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
October 30, 1959	\$ 9,139.43
June 23, 1961	62,139.70
August 15, 1966	<u>35,750.00</u>
Total	<u>\$107,029.13</u>

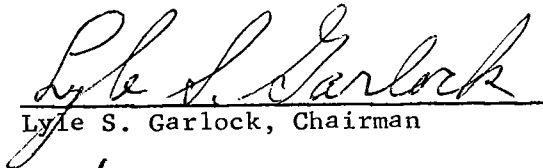
Accordingly, the following Certification of Loss will be entered, and in all other respects the Proposed Decision of April 14, 1971, as amended herein, is affirmed.

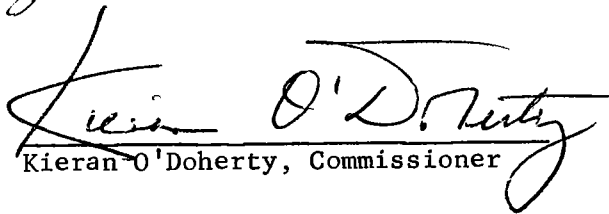
CERTIFICATION OF LOSS

The Commission certifies that the ESTATE OF STELLA MINARDI IRVINE, DECEASED succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Seven Thousand Twenty-Nine Dollars and Thirteen Cents (\$107,029.13) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

JUN 30 1972


Lyle S. Garlock, Chairman


Kieran O'Doherty, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

STELLA MINARDI IRVINE

Claim No. CU -3662

Decision No. CU

6164

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$108,529.28, was presented by STELLA MINARDI IRVINE based upon her asserted one-half interest in real and personal property in Cuba. Claimant states that she has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) [1970].)

Claimant asserts that pursuant to the community property laws of Cuba she owned a one-half interest in the following:

Cattle	\$ 18,278.85
Accounts receivable	14,358.41
Sugar cane plantation	109,921.30
Plot and residence	58,000.00
Unimproved plot	4,000.00
Furniture and fittings	9,000.00
Automobile	<u>3,500.00</u>
	\$217,058.56

The record includes copies of letters, resolutions, deeds, copy of report to National Institute of Agrarian Reform, an appraisal, cancelled checks, and other documentation offered in support.

By Commission letter of September 26, 1967 claimant was advised to submit her birth certificate, or copy thereof, inasmuch as she asserts


she was married as a United States citizen, whereas the record does not substantiate her United States nationality. Additionally, she was advised to establish the value of the personal property as well as title to the automobile; and further was requested to submit certain translations.

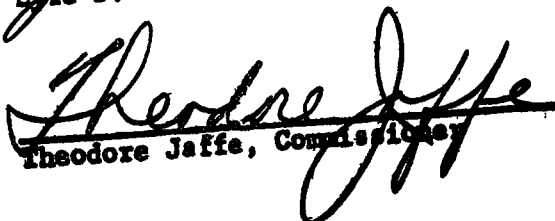
Thereafter, certain budgetary restrictions were imposed on the Commission in 1968. However, by letter of September 12, 1969, claimant was reminded that no reply had been received and claimant was informed that absent such evidence it might become necessary to determine the claims on the basis of the existing record. No additional evidence was submitted, although claimant stated by letter of November 28, 1969, that the translations would be submitted within 15 days. A further reminder was sent to claimant on February 8, 1971, but none of the suggested evidence has been received.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish the taking of real and personal property by the Government of Cuba from a national of the United States, as required by the Act. Accordingly, the Commission is constrained to deny this claim and it is denied. The Commission deems it unnecessary to determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

APR 14 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g), as amended (1970).)